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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

14 KEELAIN GONZALEZ, on behalf of himself and
15 on behalf of all persons similarly situated, and on
16 behalf of the State of California, as a private
attorney general,

17 Plaintiffs,

18 vs.

19 PACIFIC WESTERN BANK, a California
20 Corporation; DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. CIVSB2127657

Related Case: CIVSB2127696

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: January 4, 2023

Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept: S26

Action Filed: September 29, 2021

Trial Date: Not Set

24 On January 4, 2023, this Court conducted a hearing on the Motion for Preliminary
25 Approval of Class Action Settlement (the “Motion”) by Plaintiff Keelain Gonzalez (“Plaintiff”).
26 Having considered the Motion and the points and authorities and declaration submitted in support
27 of the Motion, including the Class Action and PAGA Settlement Agreement (“Agreement” or
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PRELIMINARY APPROVAL ORDER

1 “Settlement”) and exhibits, and **GOOD CAUSE** appearing, **IT IS HEREBY ORDERED** that the
2 Motion is **GRANTED**, subject to the following findings and orders:.

3 1. This Order incorporates by reference the definitions in the Agreement, and all
4 terms defined therein shall have the same meaning as set forth in the Agreement.

5 2. The class action settlement set forth in the Agreement, entered into among the
6 Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the
7 range of reasonableness, to be the product of arm’s-length and informed negotiations, to treat all
8 Class Members fairly, and to be presumptively valid, subject only to any objections that may be
9 raised at or before the final approval hearing. The Court further finds that Class Counsel
10 conducted sufficient investigation and research, and that they were able to reasonably evaluate
11 Plaintiff’s position and the strengths and weaknesses of their claims and the ability to certify them.
12 Plaintiff has provided the Court with enough information about the nature and magnitude of the
13 claims being settled, as well as the impediments to recovery, to make an independent assessment
14 of the reasonableness of the terms to which the parties have agreed.

15 3. The Gross Settlement Amount Two Million Six Hundred Thousand Dollars
16 (\$2,600,000). It appears to the Court on a preliminary basis that the Gross Settlement Amount and
17 terms are fair, adequate and reasonable as to all potential Class Members when balanced against
18 the probable outcome of further litigation and the significant risks relating to certification, liability
19 and damages issues. It further appears that investigation and research have been conducted such
20 that counsel for the Parties are able to reasonably evaluate their respective positions. It further
21 appears to the Court that settlement at this time will avoid substantial additional costs by all
22 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of
23 the Action. It further appears that the Settlement has been reached as the result of serious and
24 non-collusive, arms-length negotiations. The Court therefore preliminarily finds that the
25 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of
26 further litigation and the significant risks relating to certification, liability, and damages issues.

1 4. The rights of any potential dissenters to the proposed Settlement are adequately
2 protected in that they may exclude themselves from the Settlement and proceed with any alleged
3 claims they may have against Defendant Pacific Western Bank (“Defendant”), or they may object
4 to the Settlement and appear before this Court. However, to do so they must follow the procedures
5 outlined in the Agreement and Notice of Class Action Settlement and Hearing Date for Final
6 Court Approval (“Class Notice”).

7 5. The Agreement specifies for an attorneys’ fees award not to exceed one-third (1/3)
8 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$22,000,
9 and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
10 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
11 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
12 supporting these requests, including lodestar, prior to final approval.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
14 certification of a class for settlement purposes only. This stipulation will not be deemed
15 admissible in this or any other proceeding should this Settlement not become final. For settlement
16 purposes only, the Court conditionally certifies the following Class: “all individuals who are or
17 previously were employed by Defendant Pacific Western Bank in California who were classified
18 as hourly, non-exempt employees at any time during the Class Period.” The Class Period is from
19 October 1, 2018 through November 3, 2022.

20 7. The Court concludes that, for settlement purposes only, the Class meets the
21 requirements for certification under section 382 of the California Code of Civil Procedure in that:
22 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
23 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
24 community of interest amongst the members of the Class with respect to the subject matter of the
25 litigation; (c) the claims of Plaintiff are typical of the claims of the members of the Class; (d)
26 Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
27 action is superior to other available methods for the efficient resolution of this controversy; and (f)

1 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
2 representatives of the Class.

3 8. The Court provisionally appoints Plaintiff as the representatives of the Class. The
4 Court provisionally appoints Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel
5 for the Class.

6 9. The Court hereby approves, as to form and content, the Notice of Class Action
7 Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached to the Agreement
8 as Exhibit A. The Court finds that the Class Notice appears to fully and accurately inform the
9 Class of all material elements of the proposed Settlement, of the Class Members’ right to be
10 excluded from the Class by submitting a signed Request for Exclusion, and of each member’s
11 right and opportunity to object to the Settlement.

12 10. The Court finds that the method selected for communicating the preliminary
13 approval of the Agreement to Class Members is the best notice practicable under the
14 circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby
15 satisfies due process. The form and method of giving notice complies fully with the requirements
16 of California Code of Civil Procedure § 382, California Rules of Court §§ 3.766 and 3.769, the
17 California and United States Constitutions, and other applicable law. The Court orders the
18 mailing of the Class Notice by first class mail, pursuant to the terms set forth in the Agreement.

19 11. The Court hereby appoints ILYM Group as Administrator.

20 12. No later than 15 days after the Court enters the Order Granting Preliminary
21 Approval of the Settlement, Defendant will provide to the Administrator an electronic database
22 containing each Class Member’s Class Data. No later than 14 court days after receiving the Class
23 Data, the Administrator will mail the Class Notice to all Class Members via first-class regular U.S.
24 Mail using the mailing address information provided by Defendant, unless modified by any
25 updated address information that the Administrator obtains in the course of administration of the
26 Settlement.

1 13. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. The rights of any potential dissenters to the proposed Settlement are
3 adequately protected in that they may exclude themselves from the Settlement and proceed with
4 any alleged claims they may have against Defendant, or they may object to the Settlement and
5 appear before this Court. However, to do so they must follow the procedures outlined in the
6 Agreement and Class Notice.

7 14. Any Class Member who has not opted out may object or express the Member's
8 views regarding the Settlement, and may present evidence and file briefs or other papers that may
9 be proper and relevant to the issues to be heard and determined by the Court as provided in the
10 Notice. Class Members will have until the Response Deadline to submit their written objections
11 and/or a notice of intention to appear at the hearing to the Administrator in accordance with the
12 instructions in the Class Notice. Any Class Member who does not timely and validly file written
13 Objections and a notice of intent to appear shall not be permitted to present his, her, or its
14 Objections at the Final Approval and Fairness Hearing.

15 15. A Final Approval Hearing shall be held before this Court on _____
16 _____ at _____ in Department 26 of the San Bernardino County Superior Court to
17 determine all necessary matters concerning the Settlement, including: whether the proposed
18 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
19 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
20 Order and Judgment should be entered herein; whether the plan of allocation contained in the
21 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
22 finally approve attorneys' fees and costs, the service award, and the expenses of the Administrator.
23 Plaintiff's motion for final approval and Plaintiff's motion for attorneys' fees, costs and service
24 awards shall both motions shall be heard at the Final Approval Hearing. All papers in support of
25 the motion for final approval and the motion for attorneys' fees, costs and service awards shall be
26 filed with the Court and served on all counsel no later than sixteen (16) court days before the
27 hearing.

1 16. An implementation schedule is below:

2 Event	Date
3 Defendant to provide Class Data information 4 to Administrator	<i>[15 days after Order Granting Preliminary Approval]</i>
5 Administrator to mail the Class Notice to the 6 Class Members	<i>[14 days after receiving the Class Data from Defendant]</i>
7 Deadline for Class Members to submit 8 disputes, opt out, or object to the settlement	<i>[45 calendar days after the date of mailing of the Class Notice]</i>
9 Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement	<i>[16 court days before the hearing on Motion for Final Approval]</i>
10 Hearing on Motion for Final Approval	<i>[to be set by the Court in paragraph 15 above]</i>

12 17. Neither the Settlement nor any exhibit, document, or instrument delivered
13 thereunder shall be construed as a concession or admission by Defendant in any way that the
14 claims asserted have any merit or that this Action was properly brought as a class or representative
15 action, and shall not be used as evidence of, or used against Defendant as, an admission or
16 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
17 omission by Defendant or with respect to the truth of any allegation asserted by any person.
18 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
19 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
20 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
21 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
22 evidence of a presumption, concession, indication or admission by Defendant of any liability,
23 fault, wrongdoing, omission, concession or damage.

24 18. In the event the Settlement does not become effective in accordance with the terms
25 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
26 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
27 and the Parties shall revert to their respective positions as of before entering into the Agreement,
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1 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
2 including all available defenses and affirmative defenses, and arguments that any claim in the
3 Action could not be certified as a class action and/or managed as a representative action. In such
4 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
5 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
6 the Agreement with respect to the effect of the Agreement if it is not approved.

7 19. The Court reserves the right to adjourn or continue the date of the Final Approval
8 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
9 retains jurisdiction to consider all further applications arising out of or connected with the
10 proposed Settlement.

11 20. Pending the Final Approval Hearing, all proceedings in this action other than
12 proceedings necessary to carry out or enforce the terms and conditions of the Agreement and the
13 Order, are stayed and all trial and related pre-trial dates are vacated, subject to further orders of the
14 Court at the Final Approval Hearing.

15 **IT IS SO ORDERED.**

16 Dated: _____

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18 HON. DAVID COHN
19 JUDGE, SUPERIOR COURT OF CALIFORNIA
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